

## Department of the Army, DoD

## § 564.54

of this section, the United States assumes an obligation to settle administratively limited classes of claims relating to activities of the National Guard and the Air National Guard.

### § 564.53 Definitions.

As used in §§ 564.51 to 564.58, the following terms shall have the meaning hereinafter set forth:

(a) *Claim*. A written demand for payment in money.

(b) *Private property*. Real or personal property, excluding property owned by any government entity, Federal, State, city, county, or town, and excluding stocks, bonds, choses in action, debts, and insurance policies.

(c) *Camps of instruction*. Regularly scheduled training for units in organized camps, or bivouacs and maneuvers away from such camps constituting part of such training.

(d) *While en route thereto or therefrom*. The period of time during which a unit as distinguished from its individual members is travelling from its rendezvous to a camp of instruction or return, or from the camp of instruction or on a regularly scheduled maneuver and return thereto, and the routes followed by the unit. The term does not include the movement of individuals.

(e) *Proximate cause*. No precise definition of this term can be given. Whether acts or omissions of personnel constitute proximate cause must be determined in accordance with the local law. In general, an act or omission may be said to have been a proximate cause of the accident or incident if it was one of the impelling forces resulting in the accident or incident. For example, in a rear-end collision, the failure of the driver of the following car to stop in time is said to be the proximate cause of the accident. But, if the driver of the leading car stopped so suddenly and without warning that the second car, using the utmost diligence, could not have stopped, the conduct of the driver of the leading car would be said to have been the proximate cause of the accident. An act or omission without the existence of which the accident or incident would not have occurred but which cannot be said to have brought it about is a condition and would not

constitute a basis for liability, or, if committed by the claimant, would not constitute a basis for denial of his claim. For example, violations of statutes or ordinances providing standards of safety may be negligence in themselves, but may not constitute the bases of liability or for denial of a claim.

(f) *Scope of employment*. Scope of employment is determined in accordance with the law of the place where the accident or incident occurred, except that statutes in derogation of the common law, such as statutes creating a presumption that an employee is in scope of employment if using the employer's car with permission, are not controlling. An act or omission is within the scope of employment if such activity is expressly or impliedly directed or authorized by competent authority or is at least in part intended to further the mission of the unit or organization, or the interests of the National Guard or the Air National Guard. In determining whether an act or omission was within the scope of employment, consideration must be given to all the attendant facts and circumstances, including the time, place, and purpose thereof; whether it was in furtherance of the mission of the unit of the National Guard or Air National Guard; whether it was usual for or reasonably to be expected of personnel of the classification and grade involved; and whether the instrumentality causing the damage or injury resulted was property of the National Guard or Air National Guard, or of a State or the Federal Government being used by the National Guard or Air National Guard.

### § 564.54 Claims payable.

Claims for damage to or loss of private property proximately resulting from authorized activities incident to the operation of camps of instruction, including maneuvers, field exercises, training of units and personnel, movement of vehicles, operation of aircraft, maintenance and support of units and personnel, tortious acts or omissions of